

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Robert W. McAllister

Date application filed with the Town Clerk: October 20, 2006

Nature of request: A Special Permit under Section 9.22 of the Zoning Bylaw to add a deck to a non-conforming structure

Address: 1612 South East Street (Map 26B, Parcel 137, R-LD Zoning District)

Legal notice: Published on October 25 and November 1, 2006 in the Daily Hampshire Gazette and sent to abutters on October 23, 2006

Board members: Tom Simpson, Ted Rising and Al Woodhull

Submissions: The petitioner submitted the following:

- A site plan drawn by Harold Eaton and Associates dated 2005, showing the location of the barn house and proposed deck, with dimensions of the structures and setback measurements.
- A set of building plans for the deck, drawn by Pat H. Wilson, dated 7/10/06.
- A letter from David Waskiewicz, Inspection Services Department, dated 10/10/06, stating that the house is a non-conforming structure, and that a Special Permit is needed to enlarge it.

The Planning Department submitted a memo dated 11/2/06 outlining the history of the zoning change from R-O to R-LD for the property and the resulting non-conformity of the lot/house, and a memo dated 10/3/88 which explained how the zoning changes to R-LD in 1988 in the area would affect the re-zoned parcel.

Site Visit: November 7, 2006

Two members of the Board met with Mr. McAllister at the site. They observed the two large adjoining lots in rural South Amherst where the applicant and his son live. The footings for the proposed deck of the house under consideration were already in place. The Board observed the property lines and sideyard setback nearest to the proposed deck.

Public Hearing: November 9, 2006

Mr. McAllister spoke to the application and gave the following information:

- He and his son wish to add a deck to the house they built for the son;
- The house was designed, permitted and built with the deck in mind;
- In designing the house, they used the R-O dimensional requirements, and built the house with those specifications in mind;
- The building permit was issued in 2005;

- They first became aware of a problem when the Occupancy Permit was issued and learned that the land was zoned R-LD;
- When they applied for a building permit for the deck in 2006, Inspection Services said that due to the change in zoning from R-O to R-LD, the house and property were non-conforming and a Special Permit was needed;
- The proposed deck will be 28 feet from the side property line, and the deck stairway is slightly more than 28 feet; the side setback regulations are 20 feet for the R-LD and 25 feet for the R-O district;

Mr. Woodhull asked why the confusion occurred concerning the zoning classification of this parcel, since the change to R-LD happened in 1988, seven years before the applicant built his house. Building Commissioner Bonnie Weeks answered that the maps in the Inspection Services office have not been updated since the zoning change, and the GIS system on the computer showing zoning districts was not available until 2006.

Mr. McAllister added that his neighbors were not aware of the zoning changes either.

Ms. Weeks said that the R-O and R-LD lines dance around each other a lot and are convoluted along South East Street near the Aquifer Recharge Areas. So it's often not clear where the zoning lines are. The Board agreed, having had some confusion about zoning districts along South East Street earlier.

Mr. Woodhull asked why the footings for the deck were already installed. The applicant replied that the posts were put in because the weather will soon be changing, and they had not been aware that a Special Permit was needed earlier.

Mr. Rising asked if Town water and sewer is available along that section of South Amherst. The applicant said that it is available now.

Mr. Rising made a motion to close the evidentiary part of the hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

Under Section 9.22 of the Zoning Bylaw, the Board may authorize, under a Special Permit, a non-conforming structure or land to be extended or enlarged, provided that such enlargement will not be substantially more detrimental to the neighborhood than the existing non-conforming building. The Board finds that the addition of the deck will add a safe means of egress out the back of the house, and will enhance the appearance of the house overall.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there is much open space in the area and the house was designed to have a deck off the back of the house.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the house and deck are located beyond the sideyard setback requirements of the Zoning Bylaw.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters,

vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site because the deck is located in the back of the house, well away from the street or driveways.

10.391 and 10.395 – The proposal protects unique or important natural, historic or scenic features because the house and deck are modest in size, not intrusive into the natural and scenic features of the open space and Pelham Hills to the east.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because one of the conditions of this permit is that exterior lighting shall be downcast.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because there is much open, flat land on the property.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Rising made a motion to APPROVE the application, with conditions. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit under Section 9.22 of the Zoning Bylaw to add a deck to a non-conforming structure on the premises at 1612 South East Street, (Map 26B/Parcel 137, R-LD Zoning District), as requested in the application filed by Robert W. McAllister, with conditions.

THOMAS SIMPSON

EDWARD RISING

ALBERT WOODHULL

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit under Section 9.22 of the Zoning Bylaw to add a deck to a non-conforming structure on the premises at 1612 South East Street, (Map 26B/Parcel 137, R-LD Zoning District), as requested in the application filed by Robert W. McAllister, subject to the following conditions:

1. The deck shall be built according to plans approved by the Board at the public meeting on November 9, 2006.
2. All exterior lighting shall be downcast.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE